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SUPREME COURT, U. S.

In the
Supreme Court of the United States

OCTOBER TERM, 1963

No. 415

THE SHELL COMPANY (PUERTO RICO) LTD.,
PETITIONER,

v.

SECRETARY OF THE TREASURY OF THE COMMONWEALTH OF PUERTO RICO,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

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In the
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THE SHELL COMPANY (PUERTO RICO) LTD.,
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v.

SECRETARY OF THE TREASURY OF THE COMMONWEALTH OF PUERTO RICO,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

The Shell Company (Puerto Rico) Limited (hereinafter referred to as petitioner) prays that a writ of certiorari issue to review the Decree of the Supreme Court of the Commonwealth of Puerto Rico entered April 11, 1963 in the above entitled case refusing to review a judgment entered by the Superior Court of Puerto Rico, San Juan Part, on January 4, 1963.

Opinions Below

The opinion of the Superior Court of Puerto Rico, San Juan Part, which the Supreme Court of Puerto Rico re-

fused to review, is not reported. A copy thereof is appended to this petition in the Appendix at pp. 11-17. The Decree of the Supreme Court of the Commonwealth of Puerto Rico entered April 11, 1963 is not reported either. A copy thereof is appended hereto in the Appendix at p. 18.

However, judgments and opinions in companion cases, some involving petitioner, have been entered by the Supreme Court of the Commonwealth of Puerto Rico as follows:

(a) Judgment entered May 17, 1961, cases Nos. 12597 and 12598, The Shell Company (Puerto Rico) Limited, plaintiff, vs. The Secretary of the Treasury of Puerto Rico, defendant, granting the complaints of plaintiff, not reported. Copy of this judgment is appended to this petition in the Appendix at pp. 19-20.

These cases were appealed, together with others, by the Secretary of the Treasury of Puerto Rico to the United States Court of Appeals For the First Circuit, Docket No. 6101, The Secretary of the Treasury of Puerto Rico, respondent, appellant, vs. Esso Standard Oil Co. (P.R.) et al., plaintiffs, appellees.

(b) Opinion and judgment entered May 17, 1961, Case No. 12006, Puerto Rico Dry Dock and Marine Terminals, Inc., plaintiff, vs. Secretary of the Treasury of Puerto Rico, defendant, reported at 82 P.R.R. 636. Copy of this opinion is appended to this petition in the Appendix at pp. 21-31.

(c) Opinion and judgment, on reconsideration, entered June 22, 1962 in Case No. 12006, Puerto Rico Dry Dock and Marine Terminals, Inc., plaintiff, vs. Secretary of the Treasury of Puerto Rico, defendant, referred to in (b) above, which is not reported as yet. A copy of this opinion is appended to this petition in the Appendix at pp. 36-44.

Jurisdiction

The Decree of the Supreme Court of Puerto Rico was entered April 11, 1963. On July 5, 1963 Mr. Justice Potter Stewart extended the time for filing a petition for a writ of certiorari to and including September 7, 1963.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1258(3).

Questions Presented

Petitioner filed a complaint (R. 29-32) with the Supreme Court of Puerto Rico, San Juan Part, to recover property taxes paid to the Secretary of the Treasury of Puerto Rico on personal and real property situated within land in Puerto Rico owned by the United States of America. The contention of petitioner is that the United States has exclusive jurisdiction in such land and that hence there is no local authority or jurisdiction to levy the tax.

The Superior Court of Puerto Rico, San Juan Part, dismissed the Complaint (R. 37-41). Petitioner requested a writ of revision from the Supreme Court of the Commonwealth of Puerto Rico but this was denied without an opinion (R. 96).

The questions presented are:

1. Whether upon ceding to petitioner and other oil companies the use and occupancy of land and other facilities owned by it in Puerto Rico, pursuant to the terms of the Military Leasing Act of August 5, 1947, the United States lost its exclusive jurisdiction thereon as a result of the operation of a statute of the Commonwealth of Puerto Rico so providing "upon the subsequent 'alienation' by the United States" of any such land.

2. Whether a statute of the Commonwealth of Puerto

Rico providing for the reestablishment of local jurisdiction whenever the United States "alienates" land over which it has held exclusive jurisdiction may stand so as to permit the taxation of private property situated within such land, still owned by the United States, notwithstanding the fact that the land was acquired through condemnation proceedings in 1942 when Puerto Rico was clearly a "territory" of the United States subject to the control of Congress by virtue of Article 4, Sec. 3, Cl. 2 of the United States Constitution.

3. Whether the consent given by Congress in the Military Leasing Act (10 U.S.C., Section 2667) for the taxing by State or local governments of "(T)he interest of a lessee of property leased" under the terms thereof is limited to the leasehold interest of the lessee or may extend to include the taxing of property belonging to lessee situated within such land but not covered by the terms of the lease.

Statutes and Constitutional Provisions Involved

The territorial clause of the Constitution of the United States of America (U.S.C., Constitution, Article IV, Section 3, Clause 2); the Military Leasing Act of August 5, 1947 (10 U.S.C., Section 2667); Act of the Legislature of Puerto Rico, approved February 16, 1903 (28 L.P.R.A., Section 45); Act No. 63 of the Legislature of Puerto Rico approved June 10, 1955 (28 L.P.R.A., Section 57—Cum. Supp.), all of which are set forth in the Appendix at pp. 45-47.

Statement

I. Procedural History of the Case

The Secretary of the Treasury of Puerto Rico levied and collected ad valorem property taxes on real and personal

property of petitioner situated within land owned by the United States of America in Puerto Rico and which petitioner used and occupied together with other oil companies pursuant to agreements (R. 59-75; R. 75-79) entered into with the United States of America.

Petitioner paid such taxes and thereafter requested the refund thereof from the Secretary of the Treasury of Puerto Rico in accordance with local law and procedure. This refund was denied and petitioner then filed a complaint (R. 29-32) for the refund of said taxes with the Superior Court of Puerto Rico, San Juan Part, which on January 4, 1963 entered judgment (R. 37-41) dismissing petitioner's complaint.

Petitioner requested the review of this judgment from the Supreme Court of the Commonwealth of Puerto Rico (R. 1-11) but on April 11, 1963 such review was denied (R. 96). On July 2, 1963 petitioner requested extension of time to file this petition and on July 5, 1963 the Hon. Potter Stewart issued an order extending the time therefor to September 7, 1963.

II. Facts Material to the Questions Presented

On or about March 3, 1942 the District Court of the United States for the District of Puerto Rico entered judgment (R. 53-59) in Civil Case No. 2453 by which the United States of America was vested with title to 180.14 acres of land, more or less, situated within the Municipality of Guaynabo, Puerto Rico, pursuant to condemnation proceedings instituted against the private owners thereof. Such judgment was entered on the basis, *inter alia*, of a declaration of taking (R. 41-51) issued February 25, 1942 by James Forrestal as Acting Secretary of the Navy.

The taking of said land was declared to be for immediate public use by the United States of America for the estab-

lishment of fuel storage facilities, for use in connection with the Naval Air Station, San Juan, Puerto Rico.

On or about July 2, 1947 the Secretary of the Navy, acting on behalf of the United States of America, ceded the use and occupancy of a portion of said land, together with other facilities, to petitioner and other oil companies operating in Puerto Rico pursuant to the terms of an agreement which was supplemented by a Supplementary Agreement entered into on or about March 29, 1948 (R. 59-75; R. 75-79).

The Secretary of the Treasury of Puerto Rico levied and collected ad valorem property taxes on real and personal property belonging to petitioner situated within said land owned by the United States of America. The denial of the Secretary of the Treasury of Puerto Rico to refund such taxes to petitioner has caused the suits involved in this case. Petitioner claims that the Commonwealth of Puerto Rico has no jurisdiction or authority to levy such taxes because the United States of America acquired in 1942 and still retains exclusive jurisdiction over the land in question. The Secretary of the Treasury of Puerto Rico contends that such exclusive jurisdiction was lost over that portion of the land ceded to petitioner and the other oil companies when the agreement therefor was entered on or about July 2, 1947.

III. How Federal Question Raised Below

A. In Trial Court

It was stated in the complaint that the property taxed by the Secretary of the Treasury of Puerto Rico was situated in land owned by and subject to the exclusive jurisdiction of the United States of America (R. 30, 31, 32). The question was also raised by verbal stipulation entered during the trial of the case.

B. Before the Supreme Court of the Commonwealth of Puerto Rico

In the petition seeking review of the judgment entered by the Superior Court of Puerto Rico, San Juan Part. (R. 2, 4).

The court of first instance—Superior Court of Puerto Rico, San Juan Part—upheld the tax on the basis that "(T)he immunity of the Federal Government from state regulation does not extend beyond the government itself and the governmental functions performed by its officers and agents." (R. 37, 38; Appendix p. 15). The Supreme Court of the Commonwealth of Puerto Rico merely refused to review the Superior Court's judgment, without an opinion.

Reasons for Granting the Writ

1. The decision of the court below wrongfully deprives the United States of its exclusive jurisdiction over land owned by it in Puerto Rico. It is not predicated in that the tax has been authorized by Congress nor is the jurisdiction of the Commonwealth of Puerto Rico restored only for taxing purposes. Its real basis is the application of a local statute providing the reestablishment of local jurisdiction over land owned by the United States and subject to its exclusive jurisdiction upon the subsequent "alienation" thereof by the United States. Under the local statute (Appendix pp. 46-47) reestablishment of local jurisdiction is unrestricted. In the instant case it involved the authority to levy and collect property taxes on petitioner's real and personal property but any other exercise of local jurisdiction such as zoning, safety, traffic and similar regulations would be conceivable if the application of the local statute as made by the court below is left undisturbed.

It is submitted that the exclusive jurisdiction of the

United States over land owned by it in Puerto Rico—whether it is the specific parcel of land involved in this case or any other land situated elsewhere in Puerto Rico—cannot be at the mercy of the application of a local statute whenever it is deemed that the United States has "alienated" the same. The case at hand is a good example of the implications that could be involved. The United States did not transfer title over the land in question. It still owns it. It ceded its use and occupancy under the terms of the Military Leasing Act to petitioner and other oil companies. Upon doing so, the Secretary of the Navy in the original Agreement declared, *inter alia*, that "the rehabilitation and continued maintenance of said FACILITIES and the construction of substantial additional facilities will be of direct benefit to the United States of America at this time, since such action satisfies a basic requirement of national defense . . . and, insofar as future conditions are concerned, placing the United States Government in a position of being able to recapture an actively maintained and modernized installation whose immediate use is vital at such time; . . ." (R. 60, 61) and further declared, in the Supplementary Agreement, that "the Secretary of the Navy has determined that it will promote the national defense and will be in the public interest to lease all of the facilities subject to the contract on a long-term basis . . ." (R. 76). Therefore, in reality the United States Government is still "using" the premises for the purposes of the national defense, i.e., the same purposes for which the land was taken from its private owners in 1942 (R. 41).

However, the court below has held that such leasing out to petitioner and other oil companies constituted the "alienation" of the land and other facilities involved by the United States that brought into operation a local statute that caused the automatic loss of exclusive jurisdiction thereon on the part of the United States. Hence, that the

local government again has jurisdiction over the premises including, but not limited to, the authority to levy and collect the taxes involved in this case.

2. When the United States acquired the land involved in this case in March 3, 1942 (R. 53-59), Puerto Rico was a territory of the United States. *People of Puerto Rico* v. *Shell* (1937), 302 U.S. 253, 82 L. ed. 235; *Balzac* v. *People* (1922), 258 U.S. 298, 66 L. ed. 627. This means that Puerto Rico was being governed by Congress under the "territorial clause" of the United States Constitution which includes the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; . . ." and that its powers and the extension thereof are as controlled by Congress. *San Juan Trading Co.* v. *Sancho et al.* (1940), 114 F.2d. 969, cert. denied, 1941, 312 U.S. 702, 85 L. ed. 1136; *Rainier Nat. Park Co.* v. *Martin* (1938), 23 F. Supp. 481, affirmed 302 U.S. 661; 82 L. ed. 511; *Granville-Smith* v. *Granville-Smith* (1955), 349 U.S. 1, 99 L. ed. 773. Consequently, when the land in question was acquired by it in 1942 the United States did not need the consent of the local government to acquire exclusive jurisdiction thereon. Such consent is only required in the case of a "state" and Puerto Rico was a "territory". Constitution, Article 1, Section 8, Cl. 17. Nor can it be held, as did the court below, that the United States is subject to lose its exclusive jurisdiction by the operation of a local statute. This is clearly contrary to the full powers and authority Congress has over the "territory" by virtue of Article 4, Section 3, Clause 2 of the United States Constitution.

3. The decision below upholds a local tax that has not been authorized by Congress in the Military Leasing Act of August 5, 1947. The tax involved is not imposed on the "lessee's interest" but rather on property owned by petitioner and not covered by the "lease". It is the same

type of tax as was involved in such cases as *Surplus Trading Co.* v. *Cook*, 281 U.S. 647; *S. R. A.* v. *Minnesota*, 327 U.S. 558; *James* v. *Dravo Contracting Co.*, 302 U.S. 134 and *Wheeling Steel Corp.* v. *Fox*, 298 U.S. 193. Therefore, upon upholding the tax in the case at bar the decision below has upheld the same type of tax that has been ruled out as unauthorized by that Court in the aforesaid cases, among others.

Conclusion

For the reasons set forth above it is respectively submitted that this petition for a writ of certiorari should be granted.

(s) FERNANDO RUIZ-SURIA
Fernando Ruiz-Suria
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San Juan, Puerto Rico 00902

Appendix

GENERAL COURT OF JUSTICE OF PUERTO RICO
SUPERIOR COURT—SAN JUAN PART

Civil No. 61-4975
Refund of Taxes

THE SHELL COMPANY (P.R.) LTD.,
Plaintiff,
v.
SECRETARY OF THE TREASURY,
Defendant.

Civil No. 57-3952
Refund of Taxes

THE SHELL COMPANY (P.R.) LTD.,
Plaintiff,
v.
SECRETARY OF THE TREASURY,
Defendant.

Civil No. 59-1878
Refund of Taxes

THE SHELL COMPANY (P.R.) LTD.,
Plaintiff,
v.
SECRETARY OF THE TREASURY,
Defendant.

Civil No. 59-1877
Refund of Taxes

THE SHELL COMPANY (P.R.) LTD.,
Plaintiff,
v.
SECRETARY OF THE TREASURY,
Defendant.

Civil No. 60-6418
Refund of Taxes

THE SHELL COMPANY (P.R.) LTD.,
Plaintiff,

v.

SECRETARY OF THE TREASURY,
Defendant.

Civil No. 61-4201
Refund of Taxes

THE SHELL COMPANY (P.R.) LTD.,
Plaintiff,

v.

SECRETARY OF THE TREASURY,
Defendant.

Civil No. 61-4976
Refund of Taxes

THE SHELL COMPANY (P.R.) LTD.,
Plaintiff,

v.

SECRETARY OF THE TREASURY,
Defendant.

Civil No. 57-1961
Property Taxes

ESSO STANDARD OIL COMPANY,
Plaintiff,

v.

SECRETARY OF THE TREASURY,
Defendant.

Civil No. 61-3504
Property Taxes

ESSO STANDARD OIL COMPANY,
Plaintiff.

v.

SECRETARY OF THE TREASURY,
Defendant.

Civil No. 62-4062
Property Taxes

ESSO STANDARD OIL COMPANY,
Plaintiff.

v.

SECRETARY OF THE TREASURY,
Defendant.

Civil No. 57-5703
Property Taxes

ESSO STANDARD OIL COMPANY,
Plaintiff.

v.

SECRETARY OF THE TREASURY,
Defendant.

Civil No. 60-2963,
Property Taxes

ESSO STANDARD OIL COMPANY,
Plaintiff.

v.

SECRETARY OF THE TREASURY,
Defendant.

Civil No. 61-3001
Property Taxes

ESSO STANDARD OIL COMPANY,
Plaintiff,
v.
SECRETARY OF THE TREASURY,
Defendant.

Civil No. 59-6567
Property Taxes

ESSO STANDARD OIL COMPANY,
Plaintiff,
v.
SECRETARY OF THE TREASURY,
Defendant.

Civil No. 58-3050
Property Taxes

ESSO STANDARD OIL COMPANY,
Plaintiff,
v.
SECRETARY OF THE TREASURY,
Defendant.

Civil No. 58-3224
Personal Property Taxes

THE TEXAS COMPANY (P.R.) INC.,
Plaintiff,
v.
SECRETARY OF THE TREASURY,
Defendant.

Civil No. 57-1962
Personal Property Taxes

THE TEXAS COMPANY (P.R.) INC.,
Plaintiff,

v.

SECRETARY OF THE TREASURY,
Defendant.

JUDGMENT

The same legal question is involved in all these cases. Can the Commonwealth of Puerto Rico levy taxes on properties belonging to the Government of the United States which are enjoyed by plaintiff under a lease contract?

This question has been decided adversely to plaintiff. *P. R. Drydock, etc.* v. *Sec. of the Treas.*, No. 12006, June 22, 1962.

The immunity of the Federal Government from state regulation does not extend beyond the government itself and the governmental functions performed by its officers and agents. 318 U.S. 749; 283 U.S. 423.

The tax imposed by the Commonwealth Government is levied on properties belonging to a corporation organized under its laws and utilized by it, for its own benefit, as a private concern.

> "We may assume also that, in the absence of congressional consent, there is an implied constitutional immunity of the national government from the state taxation and from state regulation of the performance, by federal officers and agencies, of government functions. Ohio v. Thomas, 173 US 276, 43 L ed. 699, 19 S Ct 453; Johnson v. Maryland, 254 US 51, 65 L ed. 126, 41 S Ct 16; Hunt v. United States, 278 US 96, 73 L ed. 200, 49 S Ct 38; Arizona v. California, 283 US 423, 75 L ed. 1154, 51 S Ct 522. But those who contract to furnish supplies or render services to the government are not such agencies and do not perform

governmental functions, Metcalf & Eddy v. Mitchell, 269 US 514, 524, 525, 70 L ed. 384, 392, 393, 46 S Ct 172; James v. Dravo Contracting Co., 302 US 134, 149, 82 L ed. 155, 166, 58 S Ct 208, 114 ALR 318; Buckstaff Bath House Co. v. McKinley, 308 US 359, 362, 363, 84 L ed. 322, 324, 325, 60 S Ct 279; and cases cited; cf. Susquehanna Power Co. v. State Tax Commission, 283 US 291, 294, 75 L ed. 1042, 1045, 51 S Ct 434; Helvering v. Mountain Producers Corp., 303 US 376, 385, 386, 82 L ed. 907, 913, 914, 58 S Ct 623, and the mere fact that non-discriminatory taxation or regulation of the contractor imposes an increased economic burden on the government is no longer regarded as bringing the contractor within any implied immunity of the government from state taxation or regulation. Alabama v. King & Boozer, 314 US 1, 9, 86 L ed. 3, 6, 62 S Ct 43, 140 ALR 615, and (270)—cases cited; Baltimore & A.R. Co. v. Lichtenberg, 176 Md 383, 4 A2(2nd) 734, s.c. United States v. Baltimore & A.R. Co., 308 US 525, 84 L ed 444, 60 S Ct 297.

"The trend of our decisions is not to extend governmental immunity from state taxation and regulation beyond the national government itself and governmental functions performed by its officers and agents. We have recognized that the Constitution presupposes the continued existence of the states functioning in coordination with the national government, with—(271)—authority in the states to lay 'taxes and to regulate their internal affairs and policy'; and that state regulation like state taxation inevitably imposes some burdens on the national government of the same kind as those imposed on citizens of the United States within the state's borders, see Metcalf & Eddy v. Mitchell, supra (269 US 523, 524, 70 L ed. 392, 393, 46 S Ct 172). And we have held that those burdens, save as Congress may act to remove them, are to be regarded

as the normal incidents of the operation within the same territory of a dual system of government, and that no immunity of the national government from such burdens is to be implied from the Constitution which established the system, see Graves v. New York, 306 US 466, 483, 487, 83 L ed 927, 934, 937, 59 S Ct 595, 120 ALR 1466.

"Since the Constitution has left Congress free to set aside local taxation and regulation of government contractors which burden the national government, we see no basis for implying from the Constitution alone a restriction upon such regulations which Congress has not seen fit to impose, unless the regulations are shown to be inconsistent with Congressional policy. Even in the case of agencies created or appointed to do the government's work we have been slow to infer an immunity which Congress has not granted and which Congressional policy does not require. Reconstruction Finance Corp. v. J. G. Menihan Corp., 312 US 81, 85 L ed 595, 61 S Ct 485, and cases cited; Colorado Nat Bank v. Bedford, 310 US 41, 53, 84 L ed 1067, 1074, 60 S Ct 800, and cases cited; cf. Baltimore Nat. Bank v. State Tax Commission, 297 US 209, 80 L ed 586, 56 S Ct 417.

"Our inquiry here, therefore, must be whether the state's regulation of this contractor in a matter of local concern conflicts with Congressional legislation or with any discernible Congressional policy. 318 U.S. 268-270 Penn Dairies v. Milk Control Com." The complains are dismissed.

Let this judgment be entered and served.

Given in San Juan, Puerto Rico, on this 4th day of January 1963.

(s) ANGEL M. UMPIERE
Judge

I attest:

Clerk

IN THE SUPREME COURT OF PUERTO RICO

No. R-63-27

Writ of Review

THE SHELL CO. (PUERTO RICO) LIMITED,
Plaintiff-appellant

v.

SECRETARY OF THE TREASURY OF PUERTO RICO,
Defendant-appellee

ORDER

Division composed by Mr. Justice Perez-Pimentel, as Chief Judge of Division, Mr. Justice Rigau and Mr. Justice Davila

San Juan, Puerto Rico, April 11, 1963

The foregoing petition for review is hereby denied.

It was so ordered by the Court as witnesses the signature of the Chief Justice.

(s) LUIS NEGRON-FERNANDEZ
Chief Justice

I attest:

(s) IGNACIO RIVERA
Secretary

IN THE SUPREME COURT OF PUERTO RICO

12,597

Property Tax

THE SHELL COMPANY (PUERTO RICO) LIMITED

Plaintiff and Appellant

v.

SECRETARY OF THE TREASURY

Defendant and Appellee

Appeal from the Superior Court, San Juan Part

JUDGMENT

San Juan, Puerto Rico, May 17, 1961.

For the reasons stated in the opinion rendered today, in the case of *Puerto Rico Drydock and Marine Terminals, Inc.* v. *Secretary of the Treasury*, the judgment entered by the Superior Court, San Juan Part, on March 1, 1957, is hereby reversed, and another judgment is entered sustaining the Complaint and ordering the reimbursement to the plaintiff of the sum claimed in the Complaint with its corresponding interest, according to Law.

It was thus pronounced and ordered by the Court as witnesses the signature of the Chief Justice. Mr. Associate Justice Belaval dissented and Mr. Associate Justice Santana Becerra took no part.

(s) LUIS NEGRON FERNANDEZ
Chief Justice

I attest: (s) IGNACIO RIVERA
Secretary

IN THE SUPREME COURT OF PUERTO RICO

12,598

Property Tax

THE SHELL COMPANY (PUERTO RICO) LIMITED

Plaintiff and Appellant

v.

SECRETARY OF THE TREASURY

Defendant and Appellee

Appeal from the Superior Court, San Juan Part

JUDGMENT

San Juan, Puerto Rico, May 17, 1961.

For the reasons stated in the opinion rendered today, in the case of *Puerto Rico Drydock and Marine Terminals, Inc.* v. *Secretary of the Treasury*, the judgment entered by the Superior Court, San Juan Part, on March 1, 1957, is hereby reversed, and another judgment is entered sustaining the Complaint and ordering the reimbursement to the plaintiff of the sum claimed in the Complaint with its corresponding interests, according to Law.

It was thus pronounced and ordered by the Court as witnesses the signature of the Chief Justice. Mr. Associate Justice Belaval dissented and Mr. Associate Justice Santana Becerra took no part.

(s) LUIS NEGRON FERNANDEZ
Chief Justice

I attest: (s) IGNACIO RIVERA
Secretary

IN THE SUPREME COURT OF PUERTO RICO

12006

Property Tax

PUERTO RICO DRYDOCK AND MARINE TERMINALS, INC.,
Plaintiff-respondent
v.
SECRETARY OF THE TREASURY OF PUERTO RICO,
Respondent-appellant

APPEAL FROM THE SUPERIOR COURT, SAN JUAN PART

OPINION OF THE COURT

Delivered by Mr. Justice Perez Pimentel

San Juan, Puerto Rico, May 17, 1961

Act No. 77 of May 1, 1944 (Sess. Laws, p. 670) authorized the Governor and the Commissioner of the Interior of Puerto Rico to sell to the United States Government for national-defense purposes, a dry dock and the lands wherein the same is constructed.

In order to facilitate said sale and upon agreement between the United States Navy Department and the Commissioner of the Interior of Puerto Rico, the Government of the United States condemned said property and acquired and accepted the exclusive jurisdiction thereon upon taking possession thereof in the year 1941.

Once the national emergency had ended, the Navy Department leased the afore-mentioned property to Abarca Dry Dock Corporation.[1] Said corporation has been engaged from the time of its organization, to the business of repairing sea vessels, to maritime services in the operation of a floating dock and a dry dock, and to the services of

[1] Afterwards, this Corporation changed its name to "Puerto Rico Dry Dock and Marine Terminals," which now appears as the plaintiff-respondent.

loading and unloading cargo within the property leased to the United States Government.

On January 1, 1952 the lessee was the owner of certain personal property consisting of cash on hand, materials and goods, furniture and fixtures, vessels, machinery and equipment for loading and unloading cargo. All of said property was situated within the lands belonging to the Government of the United States and which had been leased to the Abarca Dry Dock Corporation.

On June 15, 1953 the Secretary of the Treasury notified the lessee corporation of a tax assessment for the fiscal year 1952-53 on the personal property previously described.

The taxpayer appealed to the Superior Court challenging the validity of said assessment on the ground that the property on which the tax was sought to be levied was totally situated outside the tax jurisdiction of the Commonwealth of Puerto Rico, since it was located on land leased by the People of Puerto Rico to the Government of the United States by virtue of legislation enacted to that effect, and that all jurisdiction to levy taxes on real or personal property located in said land had been transferred totally and unconditionally and without restriction to the United States Government.

The Superior Court granted the taxpayer's contention and rendered judgment setting aside the afore-mentioned tax assessment and defendant appeals before us for reversal thereof.

Act. No. 77 of 1941, which authorized the Governor and the Commissioner of the Interior to sell to the Government of the United States the lands wherein the dry dock is located, remains silent as far as jurisdiction is concerned. However, by Act of February 16, 1903, the People of Puerto Rico gave its consent to the United States to acquire for naval, military or other public purposes, by purchase or condemnation, any lands within the Island of Puerto Rico,

and granted exclusive jurisdiction to the United States over any and all lands thus acquired. Said Act provided, however, "that upon the subsequent alienation by the United States of any land so acquired the People of Porto Rico shall again have jurisdiction thereover." It also retained a concurrent jurisdiction with the United States over offenses committed within the limits of the lands of the Island of Culebra, conveyed to the United States.[2]

Article I, §8, clause 17 of the Constitution of the United States grants power to Congress to exercise exclusive jurisdiction over all places purchased with the consent of the Legislature of the State in which the same shall be, for the construction of forts, powder houses, arsenals, docks, and other public buildings. In *Moore* v. *District Court*, 59

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[2] Act of February 16, 1903 provides the following in its §§ 5 and 6:

"Section 5.—That consent be and is hereby given to the United States to acquire for naval, military or other public purposes, by purchase or condemnation any lands within the island of Puerto Rico, and when so acquired and possession thereof shall have been taken by the United States, all jurisdiction over such lands by the People of Puerto Rico shall cease and terminate; Provided, however, that upon the subsequent alienation by the United States of any lands so acquired the People of Puerto Rico shall again have jurisdiction thereover.

"Section 6.—That exclusive jurisdiction be and is hereby ceded to the United States over any and all lands that may thereafter be acquired by it in the island of Puerto Rico by purchase or condemnation; and over any and all lands and the shores thereof, including streets and other public highways; conveyed to it by the Governor of Puerto Rico under the provisions hereof; and over any and all lands in which any interests or claim of the People of Puerto Rico may hereafter be released to the United States by the Governor of Puerto Rico as provided herein; Provided, however, that in and over any lands acquired by, or conveyed under the terms hereof to the United States, in the island of Culebra, the People of Puerto Rico shall retain a concurrent jurisdiction with the United States over offenses committed within the limits of the lands so conveyed, such jurisdiction however to be exercised only upon the complaint of the officer of the navy or other officer of the United States in charge thereof."

Act No. 2 of November 18, 1953 amended §5 of the Act of 1903 to include the *lease* as one of the means of acquisition whereby the

P.R.R. 618, this Court decided that said constitutional clause which expressly mentions state legislatures, is not applicable to the organized and unincorporated territory of Puerto Rico,[3] the Act of 1903 being applicable. It was also stated in this case at page 622:

> "As may be seen, the Puerto-Rican statute and the constitutional clause above cited coincide in that the jurisdiction of the United States shall be exclusive where the acquisition of land in the States, with the consent of their legislatures, is effected by purchase and for the construction of forts, powder houses, arsenals, docks and other necessary buildings (National Constitution), by purchase or condemnation, for naval, military or other public purposes (Territorial Statute). Therefore, resort can and should be had to

Government of the United States could acquire exclusive jurisdiction over lands within the Island of Puerto Rico for the purposes stated in said section. (28 L.P.R.A. § 45.)

Act No. 63 of June 10, 1955 repealed the above-mentioned §5 of the Act of 1903 (28 L.P.R.A. § 45 — Cum. Supp. 1956).

Section 3 of the above-mentioned Act No. 63 provides that said jurisdiction shall be understood as ceded upon the express conditions that within the lands acquired by the United States arrests originating under the laws of the Commonwealth of Puerto Rico may be made and summonses originating under the said laws may be served, as well as attachments and other judicial provisions'. . . 'with regard to properties located on the said lands, provided that neither the properties of the United States, neither the use nor benefit which the United States derives from the said properties, nor the purposes for which the lands were acquired, are affected.

Section 4 provides that the jurisdiction granted shall continue only while the United States is the proprietor or is in possession of the lands and the lands are used for the naval, military or other public purposes for which they were acquired. In the event the United States ceases to be proprietor of the lands or to be in possession of the same, or in the event that they are not used for the purposes for which they were acquired, the Commonwealth of Puerto Rico shall again have jurisdiction over the same. (28 L.P.R.A. §§56 and 57—Cum. Supp. 1956).

[3] Since the tax at bar was assessed in January 1952, no issue whatsoever arises regarding the new political status of Puerto Rico.

the decisions construing the constitutional clause in order to determine the scope of the territorial legal provision."

"The exclusive jurisdiction which the Government of the United States acquires by virtue of clause 17 of §8, Art. I of the Constitution (in Puerto Rico by virtue of the Act of February 16, 1903) exempts from state taxation property thus acquired and property located on these premises, even though the latter belong to private institutions and are not government property. See, *Surplus Trading Co. v. Cook*, 281 U.S. 647; *S.R.A. v. Minnesota*, 327 U.S. 558; *Yellowstone Park Transp. Co. v. Gallatin County*, 31 F.2d 644, *cert. denied* 280 U.S. 555; *City of Franklin v. Coleman Bros. Corp.*, 152 F.2d 527; *James v. Dravo Contracting Co.*, 302 U.S. 134; *Palmer v. Barrett*, 162 U.S. 399; *Benson v. United States*, 146 U.S. 325; *Arlington Hotel v. Fant*, 278 U.S. 439; *United States v. Unzeuta*, 281 U.S. 146; *United States v. Fall Brooke Public Utility Dist.*, 108 F. Supp. 72; *Wheeling Steel Corp. v. Fox*, 298 U.S. 193.

However, the United States Congress has allowed the States to acquire once more the right to levy taxes within the area belonging to and under the exclusive jurisdiction of the United States. The Act known as the Buck Act enacted on October 9, 1940,[4] returned to the States, Territories and Possessions, the power to levy taxes upon sales of gasoline to individuals within a federal area, sales and use taxes occurring within said areas and income taxes on persons residing in the areas where formerly federal jurisdiction had been exclusive for all purpose.[5]

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[4] 54 Stat. 1059, codified on June 30, 1947, 61 Stat. 641; 10 U.S.C. §1270.

[5] In order to interpret the Buck Act sustaining the power of local taxation on the sale, use and revenue of private interests located within Federal land acquired pursuant to Art. I, §8, Clause 17 of the Constitution and until then under the exclusive jurisdiction of the United States, see: *Sander v. Oklahoma Tax Comm.*, 169 P2d 748 (1946),

Congress also consented to state taxation by virtue of the Military Leasing Act of August 5, 1947 (61 Stat. 774); in 34 U.S.C., §522(a), according to which the lease contract was granted in favor of plaintiff respondent.

That Act provides, in its pertinent part, that whenever the Secretary of War or the Secretary of the Navy shall deem it to be advantageous to the Government, he is authorized to lease such real or personal property under the control of his Department . . . and is not for the time required for public use, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the National defense or will be in the public interest. Each such lease shall be for a period not exceeding five years unless the Secretary of the Department concerned shall determine that a longer period will promote the National defense or will be in the public interest. . . . In any event each such lease shall be revocable by the Secretary of the Department concerned during a National emergency declared by the President."

Section 6 of said statute provides that "the lessee's interest" made or created by virtue of the provisions of this Act shall be subject to a state or local taxation.[6]

The fundamental issue in this appeal turns on the interpretation of the above mentioned §6 of the Military Leasing Act of 1947, as well as on the scope of the concept "alienation" used in the Act of February 16, 1903.

The Government alleges that (1) under the Military

cert. denied, 329 U.S. 780; *Minn.* v. *Keeley*, 126 F.2d 863; *Hill* v. *Joseph*, 129 N.Y.S. 2d 348 (1954); *Kiker* v. *City of Philadelphia*, 31 A.2d 289, *cert. denied*, 320 U.S. 741; *Carnegie-Illinois Steel Corp.*, v. *Alderson*, 34 S.E.2d 737 (1945); *cert. denied*, 326 U.S. 764; *Howard* v. *Comm. of Sinking Fund of City of Louisville*, 344 U.S. 624, 97 L. Ed. 617; *City of Springfield* v. *Kenney*, 104 N.E. 2d 65.

[6] The English text copied verbatim reads:

"Section 6.—The lessee's interest made or created pursuant to the provisions of this Act shall be made subject to a state or local taxation. . . ."

Leasing Act of 1947, Congress consented to state taxation on real and personal property located within the premises leased by the United States under said Act and (2) "that as a consequence of the lease made to respondent, the land was alienated by the Government of the United States and, consequently, by virtue of the provisions of the very Act of February 16, 1903, Puerto Rico again acquired jurisdiction over the premises."

On the other hand, plaintiff-respondent and the "amicus curiae" allege that the taxation authorized by the aforementioned Act of 1947 constitutes taxation on the lessee's interests as lessee over the leased property, that is, that in order that the "lessee's interest" should involve a specific property there should exist a relation of landlord and tenant regarding said property; that the property assessed by the Secretary of the Treasury are personal property belonging to respondent without said property having been leased, nor is there, with respect thereto, any landlord and tenant relation between the United States and the respondent; that the laws of Puerto Rico do not authorize the assessment of tax on the lessehold interest on property.

The Military Leasing Act of 1947 has been subject to interpretation by the state courts as well as by the National Supreme Court.

The parties amply discuss the scope of the decision in the case of *Offutt Housing Co.* v. *Sarpy County*, 351 U.S. 253, 100 L. Ed. 1151. The facts of said case are as follows: Offutt, a Nebraska corporation organized primarily to provide housing for rent or sale, entered into a contract with the Secretary of the Air Force to lease 63 acres of land and to build a housing project on Offutt Air Force Base in accordance with specifications submitted by the Department of the Air Force, and to be approved by the Federal Housing Commissioner. The lease was for 75 years and the rental of $100 per year. It provided that "the build-

ings and improvements erected by the lessee, constituting the aforesaid housing project, shall be and become, as completed, real estate and part of the leased land, and public buildings of the United States, leased to lessee. . . ." It further provided that upon the expiration of this lease, or earlier termination, all improvements made upon the leased premises shall remain the property of the Government without compensation. The lessee corporation was to lease all the units of the project to such military and civilian personnel at the Base as were designated by the Commanding Officer, on terms specified in the contract and at a maximum rent approved by the Federal Housing Administration and the Air Force. The contract contained other provisions related to the operation of the project regarding public services, insurance, utilities, and regarding the intervention of the Commissioner of the Federal Housing Administration, who would hold the preferred stock of petitioner acting under Title VIII of the National Housing Act. After the signing of the contract, construction proceeded and no tax return was filed; although the Attorney General of Nebraska had ruled that its interest in the project, including all of the personal property used therein, was taxable as "personal property." Sarpy County assessed taxes against petitioner on the furniture, tools, and equipment, household appliances, and improvements on leased land.

The Supreme Court of the United States, in affirming the judgment of the Supreme Court of Nebraska, sustained the lawfulness of taxation and decided that by virtue of the provisions of the Military Leasing Act of 1947, and the Wherry Military Housing Act of 1947, Congress had consented to such taxation as was involved therein.

The taxpayer argued that the state tax, measured by the full value of the buildings and improvements, is not on the "lessee's interest" but on the full value of property owned

by the Government. In relation to this the Court stated that labelling the Government as "the owner" did not foreclose ascertaining the nature of the real interests created, and did not solve the question. It considered that since the lease was for 75 years and the buildings and improvements had an estimated useful life of 35 years, the enjoyment of the entire worth of the buildings and improvements would be petitioner's and that if so, the Government's title would only be a paper title.

The lessee further argued that the tax on the appliances and furniture was invalid because petitioner owned those items, never bought them from the Government, and that therefore its interest was not made or created pursuant to the provisions of the Military Leasing Act of 1947. On this point the Court stated: "Here again using a label, that of 'owner,' as descriptive of petitioner does not answer the question. It appears from the record that petitioner was required to supply the appliances for the housing project. Petitioner and its tenants will have full use of them for the lease period and they or their replacements must be left on the property at the end of the lease. Petitioner's interest in the appliances, just like its interest in the buildings, is determined by its agreement with the Government and, keeping in mind the purpose of '6, we interpret that section as treating these items alike."

In order to determine the scope of the decision in Offutt, it is essential to refer to footnote 2 of said opinion. It reads: "The record does not indicate clearly the relationship of the parties with respect to the furniture—valued at $205 in the total 1952 valuation of the taxable property at $825,685. This is a minor matter and we leave petitioner to seek redress in the Nebraska courts should the interests of the Government and petitioner in the furniture be significantly different from their interests in the appliances or buildings."

In our opinion the *Offutt* case establishes (a) that the Wherry Act should be read as if it includes §6 of the Military Leasing Act of 1947, (b) that according to the facts of the case the local tax on lessee's interest may be assessed measured by the full value of the buildings and improvements, and (c) that lessee's interest in the personal property which it was obliged to provide for the housing project, just like his interest in the buildings, is determined by its agreement with the Government and that §6 treated both items alike.

We do not agree with the Government in that *Offutt* directly decides the issue involved herein. Rather it may be inferred from the opinion delivered in said case, since it does not decide it, that the power of exclusive legislation conferred on Congress to federal areas by Art. I, §8, Clause 17 of the National Constitution, forecloses state taxation on private property located in a military base acquired pursuant to said constitutional provision if said property is not part of the "lessee's interest" made or created by the lease contract.

When the Federal Supreme Court was faced with lessee's allegation to the effect that the tax on appliances and furniture was invalid because said lessee owns those items, never bought them from the Government, and that therefore its interest was not made or created pursuant to the provisions of the Military Leasing Act of 1947, it would have been sufficient for said court, in the event that the Secretary of the Treasury was correct, to dispose of the question by saying that under §6 of the above-mentioned Military Leasing Act Congress had consented to state taxation on private personal property located in federal premises leased pursuant to said Act. Far from deciding it thus, the court resorted to the argument that lessee's interest in the aforementioned personal property is made in the contract with the Government because lessee was

obliged to furnish them and that therefore it was an interest similar to its interest in the buildings.

We infer that in *Offutt*, the validity of the local tax was upheld on the basis that the same was levied on "lessee's interest" made or created pursuant to the Military Leasing Act of 1947.

In some former cases and in subsequent ones, courts have followed the same doctrine as in the Offutt case, upholding the validity of local or state taxes on "lessee's interest" made or created pursuant to the Military Leasing Act. See, *Meade Heights v. State Tax Comm.*, 95 A.2d 286; *Bragg International Co. v. Cumberland County*, 96 S.E. 341; *Fort Dix Apartments Corp. v. Borough of Wrightstown*, 225 F.2d 473. *Cf. Nellis Housing Corp. v. State*, 339 P.2d 758 (1959).

In *International Business Machine Corp. v. Vaughn*, 95 So.2d 747 (1957), which cites the *Offutt* case, it was decided that certain electric accounting machines owned by a private enterprise but located on federal land ceded by the State of Florida, were not subject to state or local tax because Florida gave United States Government exclusive jurisdiction without reserving the power of taxation, and neither did Congress consent to it.

In *International Business Machine Corp. v. Ott*, 89 So.2d 193 (1956), the State of Louisiana was equally deprived of its tax jurisdiction on personal property belonging to individuals and located on sites ceded to the Government of the United States by said state.

After the *Offutt* case, the National Supreme Court has decided three cases involving state taxation in relation with federal property. In none of them is the issue at bar decided, since they did not involve state taxation of private property within the boundaries of sites belonging to and under the exclusive jurisdiction of the United States. Be-

sides, in said cases there was a state law which expressly levied the tax challenged.

In one of those cases, *United States* v. *Detroit*, 355 U.S. 466, 2 L. Ed. 2d 424, a Michigan Act provided that when tax-exempt real property is used by a private party in a business conducted for profit, such private party is subject to taxation as though it owned the property. Here the United States was the owner of an industrial plant which was leased to the taxpayer. The statute provided that neither the property nor the owner was liable for the payment of taxes. The Supreme Court upheld the validity of the tax on the ground that the tax was imposed on the privilege of using the property and not on the property itself, even if the value of the property was taken as a measure for the levying of the tax.

In *Detroit* v. *Murray Corp.*, 355 U.S. 489, 2 L. Ed. 2d 421, the same Michigan Act was involved. The local tax was assessed on personal property consisting in airplane parts, instruments and materials which were in the possession of a subcontractor and by agreement, title thereof was vested in the United States upon partial payment of the same. Taxation was sustained on the ground that in its effects the tax was similar to that assessed on persons using tax-exempt property. In *United States* v. *Township of Muskegon*, 355 U.S. 484, 2 L. Ed. 2d 436, the same basic issue is involved as in the case of *United States* v. *Detroit*, *supra*. The only two differences consist in that the taxpayer was using government property by virtue of a permit, and not of a lease contract and that the taxpayer was using said property in carrying out a contract with the Government.

We are aware that in the *Offutt* case emphasis is given to the fact that the legislative history of the Military Leasing Act indicates the concern of Congress for the loss of revenue to the States and its desire to prevent unfair

ness toward competitors of the private interests located without federal areas. Likewise, we have observed the tendency of the National Supreme Court to limit, by interpretation, the constitutional tax immunity when it is a matter of a private business conducted for its own private gain. However, we may not interpret the Military Leasing Act of 1947 as if it included the consent of Congress to state taxation of private personal property located in leased federal property, if such consent is not expressed in or inferred from said Act. In order that the "lessee's interest" be subject to state tax, it should be made or created pursuant to the Military Leasing Act as in the *Offutt* case and others. In these cases the lessee had an interest in the lease consisting in the enjoyment of the real and personal property and in which the government also had an interest since it came to own the same when the life of the lease came to an end. The Government's interest in said items was not subject to tax but lessee's interest was because the same was made or created by virtue of the contract made pursuant to the provisions of the Military Leasing Act.

In the case at bar the tax has been assessed on personal property belonging exclusively to lessee, not acquired by virtue of any obligation imposed upon it by the lease contract, and shall not belong to the United States upon expiration of the lease. The Federal Government is not interested in said items and the lessee's interest in the same has not been made or created pursuant to the provisions of the Military Leasing Act. Consequently, it is appropriate to conclude that pursuant to the provisions of said Act, and the Act of 1903 of Puerto Rico, the aforementioned property is not taxable. In reaching this conclusion we have not considered the scope and effect of Act No. 63 of July 10, 1955, which repealed § 5 of the Act of 1903. See the former footnote 2.

Appellant raised another issue to the effect that the Government of the United States lost its jurisdiction when it leased the lands. Its thesis is grounded in that a "lease" is equivalent to an "alienation" according to the use of this last term in the Act of 1903.[7]

We do not agree. Appellant himself admits that as a general rule, the term "*alienation*" in its narrow sense, does not include lease since "Alienation in its narrow sense, implies the transfer of the ownership of a thing, which undoubtedly did not occur in the present case." According to the Spanish Law, alienation in its broadest sense does not include the lease — her. See, *García et al.* v. *Garzot*, 18 P.R.R. 835.

The case of *R. Fabian & Co.* v. *The Registrar*, 22 P.R.R. 744, cited by appellant, decided that a power given to alienate, sell, encumber, mortgage, assign and exchange the real property does not give power to lease. "The power of leasing—it was said at p. 745—might perhaps be considered as an act of administration, but no power to administer was given. . . ." See *Berrocal* v. *Dist. Court and Fournier, Int.*, 75 P.R.R. 79, 88, and *Pérez* v. *Hancock*, 69 P.R.R. 46.

Regarding the controversial problem of whether the lease creates in favor of lessee a right of a "real" nature,* or

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[7] The life of the lease was five years with an option for three additional terms of 5 years upon previous written notice to the lessor, 120 days in advance to the expiration of the contract.

The contract provides, besides, that the Secretary of the Navy may terminate the contract at any time before its date of expiration (*a*) during any National emergency declared by the President or by Congress, (*b*) by previous notice written to lessee 90 days in advance when the Secretary determines that national interests so require it, and (*c*) by previous notice to lessee with 10 days in advance if (1) lessee failed to comply with any one of its obligations and did not rectify them within 10 days, . . . and (2) . . .

*(Transl. note)—This refers to the "derechos reales" of the Civil Law, a juridical concept that does *not* correspond to "real property rights".

a mere personal right or credit right, a problem which we do not intend to solve now and to which we merely refer by way of illustration, Castán adheres to this last concept and states: "The lease, a right of personal nature may, in virtue of the registration (in the cases wherein the latter lies, according to the Mortgage Law) *produce a certain "real" effect*," such as forcing the purchaser of the estate to honor the lease. (Section 1571 of the Civil Code.) But this partial effect does not modify the juridical relation. 'The content of the lessee's rights—as Perez Gonzalez and Alguer state—is not altered by the registration thereof, but they only remain guaranteed before the ultimate purchaser.' Therefore the lease does not lose its nature of a merely obligatory relation." (Castan, vol. 4 at 241)

A slight examination of the provisions of our Civil Code concerning the lease contract, dissipates any doubt as to the term *to alienate* used in the Act of 1903, which does not include a lease as the one here involved.[8]

In view of the foregoing, the judgment of the Superior Court, San Juan Part, is affirmed.

Mr. Justice Belaval dissented.

Mr. Justice Santana Becerra did not participate.

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* (Transl. note)—This refers to the "derechos reales" of the Civil Law, a juridical concept that does *not* correspond to the "real property rights"

[8] Nevertheless, see, *De la Haba* v. *Tax Court, Treas., Int.*, 76 P.R.R. 865, regarding leases constituting in themselves a transfer of property.

IN THE SUPREME COURT OF PUERTO RICO

12006

Property Tax

PUERTO RICO DRYDOCK AND MARINE TERMINALS, INC.,
Plaintiff-respondent

v.

SECRETARY OF THE TREASURY OF PUERTO RICO,
Respondent-appellant

APPEAL FROM THE SUPERIOR COURT, SAN JUAN PART

OPINION OF THE COURT

Delivered by Mr. Justice Blanco Lugo (On reconsideration)

San Juan, Puerto Rico, June 22, 1962.

By Act No. 77 of May 1, 1941 (Sess. Laws, p. 670) the Legislative Assembly of Puerto Rico authorized the Governor and the former Commissioner of the Interior of Puerto Rico to sell to the United States Government "*for national-defense purposes*" a dry dock constructed by and belonging to the State. No provision was expressly contained therein as to the cession of jurisdiction by the local government in favor of the Federal Government, for which reason we must refer to the provisions of the general law on the subject matter, that is, section 5 of the Act of February 16, 1903 (Sess. Laws, p. 110) which reads as follows.[1]

> "That consent be and is hereby given to the United States to acquire for naval, military or other public purposes, by purchase or condemnation any lands within the island of Porto Rico, and when so acquired and possession thereof shall have been taken by the United States, all jurisdiction over such lands by the

[1] The aforesaid section 5 was repealed by section 1 of Act No. 63 of June 30, 1955 (Sess. Laws, p. 228). The cession of jurisdiction over land acquired by the United States was regulated by Act No. 62 of the same date, to which provisions we shall refer hereinafter.

People of Porto Rico shall cease and terminate; Provided, however, that upon the subsequent *alienation* by the United States of any land so acquired the People of Porto Rico shall again have jurisdiction thereover."

The facts which give rise to this suit are set forth in the opinion published in 82 P.R.R. 636 (1961), and briefly stated we may say that the plaintiff-respondent Puerto Rico Drydock & Marine Terminals, Inc., as lessee of the dry dock, attacks the jurisdiction of the Commonwealth to assess taxes on a personal property belonging to said plaintiff-respondent which was physically located, on January 1, 1952, within the leased premises, that is, in the dry dock.

1. In fact, the controversy in the present case is reduced to determining whether by virtue of the aforesaid lease the Commonwealth reacquired jurisdiction for the purpose of levying taxes on the property located within the dry dock leased on the ground that it is one of the species of "alienation" mentioned in section 5 of the Act of February 16, 1903, *supra*. In our original opinion, 82 P.R.R. 636, 649, we held that since the term alienation in its strict sense implies a conveyance of ownership, and in its broad sense, in the Spanish law, it does not include a lease, the United States Government had not lost its jurisdiction.[2] It is so indeed if we exclusively apply to the situation the provisions of the civil law and the corresponding sections of the property law.

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[2] As stated by the appellant in his memorandum in support of the motion for reconsideration, both litigants induced the court to consider and decide the question of interpretation of the term "to alienate" on the basis of the Spanish text of the Act of 1903. It is in the motion for reconsideration that our attention is called to the fact that in the English text of the Act, which is the one that should prevail, the term "alienation" is used for "*enajenacion*" and that it is to the interpretation of this term that we must look in order to determine the scope of the saving clause made by the People of Puerto Rico when ceding exclusive jurisdiction to the United States over the dry dock.

But as we delve deeper into the problem it seems to us that its solution does not rest in the exclusive application of those provisions but that other considerations come into play which, within the process of interpretation of the specific section, and as a matter of local law, call for a different result. In the first place, the Act of 1903 was signed in the English language by the then Governor William H. Hunt. The Executive Council corresponding to our present Senate was composed of six Continentals[3] and five Puetro Ricans,[4] section 18 of the Organic Act of 1900, known as the Foraker Act, 1 L.P.R.A. pp. 22, 34-35, and this Executive Council exercised legislative functions as one of the two Houses, sections 27 and 31 of said Organic Act, 1 L.P.R.A. pp. 37, and 38-39. We should adhere, therefore, to the meaning of the word "alienation" which was translated into Spanish as "*enajenacion*" and consider the latter subordinate to the meaning of the former. See, *People* v. *Charon*, 7 P.R.R. 416 (1904); *Cruz* v. *Dominguez*, 8 P.R.R. 551 (1905); *People* v. *Torres*, 9 P.R.R. 396 (1905); *People* v. *Agosto*, 10 P.R.R. 425 (1906); *People* v. *Acosta*, 11 P.R.R. 240 (1906); *People* v. *Santiago*, 16 P.R.R. 446 (1910); *Mauriquez de Lara* v. *The Registrar*, 23 P.R.R. 803 (1916); *People* v. *Baez*, 40 P.R.R. 12 (1929); *People* v. *Noonan*, 46 P.R.R. 700 (1934); *People* v. *Fonseca*, 62 P.R.R. 413 (1943); *People* v. *Diaz*, 62 P.R.R. 477 (1943); *Perez* v. *District Court*, 69 P.R.R. 4 (1948); *People* v. *Zayas*, 72 P.R.R. 17 (1951); cf. *Soin* v. *Gonzalez, et al.*, 26 P.R.R. 164 (1919); *Venegas* v. *District Court*, 41 P.R.R. 469

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[3] The Continental members of the Executive Council were Charles Hartzell (Executive Secretary), James S. Harlan (Attorney General), John R. Garrison (Auditor), William F. Willoughby (Treasurer), William H. Elliot (Commissioner of the Interior), and Samuel M. Lindsay (Commissioner of Education).

[4] The Puerto Rican members of the Executive Council were Jose Celso Barbosa, Jose Guzman Benitez, Jose Gomez Brioso, Rosendo Matienzo Cintron, and Andres Crosas.

(1930); *De Castro* v. *Board of Commissioners*, 57 P.R.R. 149 (1940); *Basora* v. *Padilla*, 62 P.R.R. 315 (1943). Even though the term "alienation" ordinarily presupposes a transfer of ownership or encumbrance thereon, such a result does not always prevail and there are American cases—particularly related to leasehold of Indian reservations for the exploitations to determine the existence of natural oil and gas mines—which admit that a lease constitutes an "alienation". See *Eldred* v. *Okmulgee Loan and Trust Co.*, 98 Pac. 929 (Okla. 1908); *Sharp* v. *Lancaster*, 100 Pac. 578 (Okla. 1909); *Barnes* v. *Stonebraker*, 113 Pac. 903 (Okla. 1909); *Duff* v. *Kearton*, 124 Pac. 291 (Okla. 1912); *Barley* v. *King*, 157 Pac. 763 (Okla. 1916); *Mailhot* v. *Turner*, 121 N.W. 804 (Mich. 1909); *Williams* v. *Hylan*, 215 N.Y. Supp. 101 (1926) and 227 N.Y. Supp. 392 (1928). In its broadest sense the term is identified, therefore, with the possession and control over the property. It is unquestionable that in a leasehold it is the lessee who has this control and possession.*

Furthermore, on different occasions we have recognized specific effects to the relationship between lessor and lessee which go beyond the mere obligations which produce a purely personal or credit right, and irrespective of the fact that by its registration it might have specifically acquired the nature of a "real" right. Thus, for condemnation purposes we have protected the right of a lessee whose contract was not recorded in the registry, to participate in the distribution of the money deposited as the fair and reasonable value of the condemned property. In *People* v. *McCormick, etc. Floor. Cer. Co., Int.*, 78 P.R.R. 895, 901 (1956), we referred "To the extent the lease impairs the value of the ownership title, the lessee must be compensated

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*(Transl. note)—This refers to the "derechos reales" of the Civil Law, a juridical concept that does *not* correspond to the "real property rights".

out of the amount which represents the full value of the ownership title, and not in addition thereto," even though the contract was not recorded. An in *Galinanes* v. *Superior Court*, 77 P.R.R. 836 (1955), in holding that a lessee could evict a sublessee on the ground that he needed in good faith the subleased premises to enlarge his own business, we stated at p. 844 that:

> "In civil law, sublease means the voluntary relinquishment of part of the property right. 'The use or enjoyment is a right inherent in the thing and inseparable therefrom; *it is one of the various rights which make up the ownership*, and therefore belongs to the owner who, precisely for that reason, may dispose of it by onerous or lucrative title, for more or less time, with greater or lesser extension. It is absurd that if the use or enjoyment of a thing is conveyed without consideration, it constitutes a "real" right* of usufruct, or use, or habitation, and that it is not so when the conveyance is made in some other way, under another name, or on payment of a specified rental. In either case, in conveying the use or the right the owner dispossesses himself of it, loses it, and delivers it to another. If afterwards he wishes to sell or give in payment the object or thing with all rights inherent therein, he may convey everything that was not conveyed theretofore, not what he already gave, since it is a principle even of common sense that no one can give what he has not, that which is not his, what he himself gave previously to another.' 10 Manresa 467, 468 (5th rev. ed. of the Instituto Editorial Reus, 1950).

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*(Transl. note)—This refers to the "derechos reales" of the Civil Law, a juridical concept that does *not* correspond to the "real property rights".

"In this commentary, Manresa expresses two concepts which clarify sufficiently the juridical phenomenon found in the lease: (1) that the lease is one of the rights of disposal *(jus disponendi)* of ownership, and, therefore, one who leases disposes of part of his property right in favor of another person, and (2) that the lease is by nature a property right transmissible in part from one person to another."

See also, by way of comparison, *Berrocal* v. *District Court*, 76 P.R.R. 35 (1954).

Finally, the Legislative Assembly indicated unequivocably its intention to that effect upon approving sections 3 and 4 of Act No. 62 of June 10, 1955 (Sess. Laws, pp. 224, 226) which read as follows:

"Section 3.—The said jurisdiction shall be understood as being granted upon the express condition that within the lands acquired by the United States arrests originating under the laws of the Commonwealth of Puerto Rico may be made and summonses originating under the said laws may be served. Also, attachments and such other judicial provisions as the courts of the Commonwealth may decide upon may be executed with regard to properties located on the said lands, provided that neither the properties of the United States, nor the use or benefit which the United States derives from the said properties, nor the purposes for which the lands were acquired, are affected.

"Section 4.—The jurisdiction granted shall continue only while the United States is the proprietor or is in possession of the lands and the lands are used for the naval, military, or other public purposes for which they were acquired. *In the event that the United States ceases to be the proprietor of the lands or to be in possession of same, or in the event that they are not used for the purposes for which they were acquired,*

the Commonwealth of Puerto Rico shall again have jurisdiction over same."

It will be noted that the controlling test of jurisdiction is the ownership or *possession* by the United States of the land ceded and the continuation of the use thereof for naval or military purposes and other public purposes for which they were acquired. In our opinion we are dealing with an interpretative law[5] in force from the very date of the Act interpreted thereby. As to the explanation of this principle of hermeneutics, see the dissenting opinion of Mr. Justice Belaval in *Gines v. Ayala*, decided December 21, 1961, and particularly the references to the commentaries of the textwriter Puig Peña on the matter appearing in Vol. I of Tome I of his *Tratado de Derecho Civil Español*, pp. 440-441. Our opinion is buttressed not only by the fact that the approval of the Act was contemporaneous with the date of the judgment rendered in the present case, to which we refer in footnote 5, but also by the fact that the Act which authorized the cession of the dry dock expressly provided that its acquisition by the United States was for "national defense purposes," and that, therefore, the jurisdiction could be understood as being granted upon the condition of compliance with such purpose alone. We can not ignore that the cession of jurisdiction can not be divorced from the purpose for which said jurisdiction is exercised, for there have been other cases where notwithstanding the fact that the property was conveyed to the Federal Government we have still retained local jurisdiction for certain purposes. Cf. *Lopez v. District Court*, 58 P.R.R. 117 (1941); *People v. Suarez*, 51 P.R.R. 877

[5] The judgment in the case at bar was rendered on May 5, 1955; Senate Bill No. 626 which later became Act No. 62 of 1955 was presented on March 10, 1955, and the Act was finally approved on the following June 10. For the legislative history of this Bill see Journal of Proceedings of 1955, pp. 2122 and 2123 (Report of the Juridical Civil Committee).

(1937). Insofar as the levy of taxes is concerned tax immunity does not exist except in cases of federal property, for we find no justification for extending immunity to a third person who has no immediate relation with the government in the private exploitation of the dry dock.

2. With respect to the Military Leasing Act, we expressly ratify our holding in our original opinion. The new contentions of the Secretary of the Treasury do not warrant our disturbing the result reached herein. See Keesling, *Property Taxation of Leases and Other Limited Interests*, 47 Cal. L. Rev. 470, 487 (1959).

The motion for reconsideration will be granted and, consequently, the judgment rendered by the Superior Court, San Juan Part, on May 5, 1955, will be reversed.

IN THE SUPREME COURT OF PUERTO RICO

12006

Property Tax

PUERTO RICO DRYDOCK & MARINE TERMINALS, INC.,
Plaintiff-respondent

v.

SECRETARY OF THE TREASURY OF PUERTO RICO,
Defendant-appellant

Appeal from the Superior Court, San Juan Part

JUDGMENT

(On Reconsideration)

San Juan, Puerto Rico, June 22, 1962

For the reasons stated in the foregoing opinion, the motion for reconsideration is hereby sustained, and in consequence thereof the opinion and judgment entered on May 17, 1961 are hereby set aside, the judgment appealed from entered by the Superior Court, San Juan Part, on May 5, 1955 is hereby reversed, and the complaint is dismissed.

It was thus pronounced and ordered by the Court as witnesses the signature of the Chief Justice. Mr. Justice Perez Pimentel and Mr. Justice Rigau concurred in the result. Mr. Justice Santana-Becerra took no part.

(s) LUIS NEGRON FERNANDEZ
Chief Justice

I attest:

(s) IGNACIO RIVERA
Secretary

Territorial Clause of the Constitution of the United States of America (U.S.C., Constitution, Article IV, Section 3, Clause 2)

Section 3. Public Lands

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Military Leasing Act of August 5, 1947
(10 U.S.C., Section 2667)

§ 2667. Leases: non-excess property

(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

(1) under the control of that department;

(2) not for the time needed for public use; and

(3) not excess property, as defined by section 472 of title 40.

(b) A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) must permit the Secretary to revoke the lease at any time, unless he determines that the omission

of such a provision will promote the national defense or be in the public interest;

(4) must be revocable by the Secretary during a national emergency declared by the President; and

(5) may provide, notwithstanding section 303b of title 40 or any other provision of law, for the maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

(c) This section does not apply to oil, mineral, or phosphate lands.

(d) Money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.

(e) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an act of Congress, the lease shall be renegotiated. Aug. 10, 1956, c. 1041, 70A Stat. 450.

Act of the Legislature of Puerto Rico, approved February 16, 1903 (28 L.P.R.A., Section 45).

45. —Consent for United States to acquire lands by purchase or condemnation; jurisdiction of Commonwealth

That consent be and is hereby given to the United States to acquire for naval, military or other public purposes, by

purchase, lease or condemnation any lands within the Island of Puerto Rico, and when so acquired and possession thereof shall have been taken by the United States, all jurisdiction over such lands by the Commonwealth of Puerto Rico shall ipso facto cease and terminate. Provided, however, That upon the subsequent alienation or the discontinuance of the lease by the United States of any or all lands so acquired, the Commonwealth of Puerto Rico shall again have jurisdiction thereover. - Feb. 16, 1903, p. 119, 5; Nov. 18, 1958, No. 2, p. 2, eff. Nov. 18, 1953.

Act No. 62 of the Legislature of
Puerto Rico, approved June 10, 1955
(28 L.P.R.A., Section 57 - Cum. Supp.)

57. Reversion of jurisdiction to Commonwealth

The jurisdiction granted shall continue only while the United States is the proprietor of or in possession of the lands and the lands are used for the naval, military, or other public purposes for which they were acquired. In the event that the United States ceases to be the proprietor of the lands or to be in possession of same, or in the event that they are not used for the purposes for which they were acquired, the Commonwealth of Puerto Rico shall again have jurisdiction over same. - June 10, 1955, No. 62, p. 224, 4, eff. June 10, 1955.

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 445

THE SHELL COMPANY (PUERTO RICO) LTD.,
PETITIONER,

v.

SECRETARY OF THE TREASURY OF THE COMMONWEALTH OF PUERTO RICO,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

BRIEF FOR RESPONDENT IN OPPOSITION

J. B. FERNÁNDEZ BADILLO
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Attorneys for Respondent.

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In the
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THE SHELL COMPANY (PUERTO RICO) LTD.,
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SECRETARY OF THE TREASURY OF THE COMMONWEALTH OF PUERTO RICO,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

BRIEF FOR RESPONDENT IN OPPOSITION

Opinions Below

The opinions and judgments below are printed in the Appendix to Petition for Writ of Certiorari.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition for Writ of Certiorari.[1]

[1] Hereinafter referred to as "the Petition".

Question Presented

Whether the Commonwealth of Puerto Rico can assess and impose property taxes on certain of petitioner's private real and personal property situated within and leased by petitioner from the United States.

Statutes Involved

The statutory provisions involved are the Military Leasing Act (10 U.S.C.A. 2667); Act of the Legislature of Puerto Rico approved on February 16, 1903 (28 L.P.R.A. 41-47); Act No. 62 of June 10, 1955 (28 L.P.R.A. 54-57, 1962 Cum. Supp.). The pertinent provisions of these statutes are printed in the Appendix, infra.

Statement

In 1942 the United States acquired through condemnation proceedings, 180.14 acres of land situated in the Municipality of Guaynabo, Puerto Rico. The Declaration of Taking issued on February 25, 1942 by James Forrestal, Acting Secretary of the Navy, specified that it was necessary that said land be taken for immediate public use by the United States of America for the establishment of fuel storage facilities, for use in connection with the Naval Air Station, San Juan, Puerto Rico.

On July 2, 1947 petitioner and other petroleum companies operating in Puerto Rico entered into a contract with the Secretary of the Navy to lease said land and other facilities. (R. 59-75). A Supplementary Agreement was entered into on March 29, 1948 (R. 75-79).

The lease was for a period of twenty years, renewable for an additional ten years, at a rental price of $15,000 per year. The contract provided that the "COMPANIES may

erect within the FACILITIES permanent improvements such as additional storage tanks, pipe lines, warehouses, field offices, pump houses, sanitary facilities, railroad sidings, and other improvements convenient to the marketing of petroleum and associated products, or to facilitate the operation of the storage facilities and the ready receipt, discharge and delivery of petroleum and associated products in both bulk and packages. . . ." and that all such additional improvements "shall remain the property of the COMPANIES and may be removed by the COMPANIES at any time prior to expiration or cancellation of this contract. . . ." (R. 66-67). It further provided that upon the expiration of the lease or of any renewal or extension thereof, "the COMPANIES shall, upon demand of the GOVERNMENT, remove all structures and improvements and restore the premises to the same condition as that at the time existing when first it discharged its obligation under Clause 3-a hereof, normal wear and tear excepted", and that the "GOVERNMENT shall have the right at the expiration or termination of this contract, or within a reasonable time thereafter, to take title to all structures and improvements placed upon the FACILITIES by the COMPANIES, and will pay the value therof to the COMPANIES." (R. 67-68).

On the fiscal years 1958-59, 1959-60, and 1960-61, the Secretary of the Treasury of Puerto Rico levied and collected property taxes on certain real and personal property belonging to petitioner and situated on a portion of the land leased by petitioner and other petroleum companies from the United States. Petitioner filed a complaint in the Superior Court of Puerto Rico, San Juan Part, praying for the refund of said taxes from the Secretary of the Treasury of Puerto Rico (R. 29-32). It was alleged that the taxes were illegally levied and collected because the property on which the taxes was levied was located on land of the exclusive property and jurisdiction of the Govern-

ment of the United States of America (R. 31-32). The Superior Court entered judgment (R. 37-41) dismissing the complaint on the authority of *Puerto Rico Drydock and Mooring Terminals, Inc. v. Secretary of the Treasury of Puerto Rico*, No. 12006, decided by the Supreme Court of Puerto Rico on June 22, 1962. (Appendix to Petition, pp. 36-44).

The Supreme Court of Puerto Rico refused to review the judgment of the Superior Court. (R. 96).

Argument

When the United States acquired the land involved in this case there was in effect the Act of the Legislature of Puerto Rico approved on February 16, 1903. Section 5 of this Act provided:

> "That consent be and is hereby given to the United States to acquire, for naval, military or other public purposes, by purchase or condemnation any lands within the island of Porto Rico, and when so acquired and possession thereof shall have been taken by the United States, all jurisdiction over such lands by the People of Porto Rico shall cease and terminate: Provided however, that upon the subsequent alienation by the United States of any land so acquired the People of Porto Rico shall again have jurisdiction thereover."

The Supreme Court of Puerto Rico held that a lease pursuant to the terms of the Military Leasing Act is an "alienation" under the local Act, and that by virtue of such lease the local government reacquired jurisdiction for the purpose of levying taxes on property located within the leased property. *Puerto Rico Drydock and Marine Terminals, Inc. v. Secretary of the Treasury of Puerto*

Rico, decided on June 22, 1962. (Appendix to Petition, pp. 36-45).

When the taxes involved in the instant case were levied, Section 5 of the Act of February 16, 1903 had been repealed by Act No. 62 of June 10, 1955 (28 L.P.R.A. §§ 54-57, 1962 Cum. Supp.). Section 4 of the 1955 Act reads as follows:

> "The jurisdiction granted shall continue only while the United States is the proprietor or is in possession of the lands and the lands are used for the naval, military, or other public purposes for which they were acquired. In the event that the United States ceases to be the proprietor of the lands or to be in possession of same, or in the event that they are not used for the purposes for which they were acquired, the Commonwealth of Puerto Rico shall again have jurisdiction over same." (28 L.P.R.A. 57, 1962 Cum. Supp.).

It is clear that under any of the two Acts the Commonwealth of Puerto Rico reacquired jurisdiction over the land leased by the United States.

Petitioner contends that since under the local statute reestablishment of local jurisdiction is unrestricted, any other exercise of local jurisdiction such as zoning, safety, traffic and similar regulations would be conceivable, thus depriving the United States of its exclusive jurisdiction over land owned by it in Puerto Rico. It is also alleged that the United States did not need the consent of the local government to acquire exclusive jurisdiction over the land in question.

These questions were not raised by petitioner in the trial court nor in the Supreme Court of Puerto Rico. See Complaint (R. 29-32), Petition for Review (R. 1-11), and Brief on Authorities (R. 21-27). On the contrary, petitioner's contention before the Supreme Court of Puerto Rico was

that the United States had exclusive jurisdiction over the leased land by virtue of the Act approved on February 16, 1903. Consequently, this Court should not consider these questions of law raised now for the first time and upon which the local courts did not have an opportunity to pass upon. See *Sonzinsky* v. *United States*, 300 U.S. 506, 514; *Walter* v. *City of St. Louis*, 347 U.S. 231, 233.

Nevertheless, we think that petitioner's contentions are without merit.

In the first place, petitioner's initial contention rests on a mere supposition. It is evident that the instant case does not deal with the application of zoning, safety or traffic regulations on the land owned by the United States. The question in the present case is limited to the imposition of local taxes on petitioner's private property located within land leased from the United States. On this matter, petitioner cannot avail himself of the United States Government constitutional immunity against State taxation, so as to enjoy an economic advantage and evade its local tax responsibility. The taxes were not levied neither directly nor indirectly against the United States or its property. On the contrary, they were imposed on the private property of the Shell Company (Puerto Rico) Ltd., which is a private corporation that had entered into a contract with the United States for the leasing of certain other facilities.[2] As this Honorable Court said in *United States* v. *City of Detroit*, 355 U.S. 466, 474:

> "Today the United States does business with a vast number of private parties. In this Court the trend has been to reject immunizing these private parties from nondiscriminatory state taxes as a matter of constitutional law. Cf. Penn Dairies v. Milk Control Comm'n, 318 U.S. 261, 270. . . ."

[2] Cf. *City of Detroit* v. *Murray Corp.*, 355 U.S. 489.

Petitioner argues that the United States Government is still "using" the leased premises for the purposes of the national defense. But it is clear, and petitioner so concedes, that the United States ceded to petitioner and other oil companies the *use and occupancy* of said premises by virtue of the contract entered between them. Obviously, the leased premises are being used by petitioner and the other oil companies in the furtherance of their own private interests. The fact that the rehabilitation and maintenance of the premises is beneficial to the United States Government does not mean that said Government is still "using" the premises.

Petitioner further contends that the United States did not need the consent of the local government to acquire exclusive jurisdiction thereon, because when the land was acquired Puerto Rico was a "territory" and such consent is only required in the case of a "state".

In the case of *People of Puerto Rico* v. *Shell Co.*, 302 U.S. 253, 82 L. Ed. 235, cited by petitioner, this Honorable Court said:

> "The aim of the Foraker Act and the Organic Act was to give Puerto Rico full power of local self determination, with an autonomy similar to that of the states and incorporated territories. Gromer v. Standard Dredging Co. 224 U.S. 362, 379, 56 L. ed. 801, 805, 32 S. Ct. 499; Porto Rico v. Rosaly y Castillo, supra (227 U.S. p. 274, 57 L. ed. 508, 33 S. Ct. 352). The effect was to confer upon the territories many of the attributes of quasi-sovereignty possessed by the states—as for example, immunity from suit without their consent. Porto Rico v. Rosaly y Castillo, supra. By those acts, the typical American governmental structure, consisting of the three independent departments — legislative, executive and judicial — was

> erected. 'A body politic'—a 'commonwealth'—was created. 31 Stat. at L. 79 [7, chap. 191, 48 U.S. C.A. 733. The power of taxation, the power to enact and enforce laws, and other characteristically governmental powers were vested. And so far as local matters are concerned, as we have already shown in respect of the continental territories, legislative powers were conferred nearly, if not quite, as extensive as those exercised by the state legislature." (82 L. Ed. pp. 242-243).

Although it is true that Puerto Rico was a territory, it is no less true that the island possessed a governmental organization with autonomy and governmental powers similar to that of the States. Congress did not intend to exercise complete and exclusive legislative control over all matters concerning Puerto Rico. Nor Congress intended that the matter contained in the Act of February 16, 1903, i.e., the acquisition of jurisdiction by the United States Government over lands in Puerto Rico and the reacquisition thereof by the Government of Puerto Rico, be left to the sole will of the Federal Government. If such would have been Congress' intention it would have exercised over the 1903 Act its power to annul local legislation.[3] See §31 of the Foraker Act, 31 Stat. 83, and §57 of the Organic Act, 39 Stat. 968. In not doing so Congress implicitly recognized the validity and necessity of the local Act. See *Soltero* v. *Descartes*, 192 F.2d 755, certiorari denied 343 U.S. 904.

Finally, petitioner contends that the decision below upholds a local tax that has not been authorized by Congress in the Military Leasing Act of 1947. This question is not involved in the instant case and, consequently, this Honor-

[3] Cf. *Buscaglia* v. *Ballester*, 162 F.2d 805, certiorari denied in 332 U.S. 816.

able Court should not consider it.[4] The controversy in the instant case was circumscribed to the construction of the 1903 Act. The Supreme Court of Puerto Rico held in the *Puerto Rico Drydock case*, *supra*, that a lease amounts to an "alienation" under the 1903 statute, and that, consequently, by virtue of such "alienation" the Commonwealth of Puerto Rico reacquired jurisdiction for the purpose of levying taxes on private property situated within the property leased from the United States. This is a reasonable and correct construction of the local statute. Said construction constitutes no assault to federal rights nor frustration of the federal purpose of providing for the rehabilitation and continued maintenance of the leased facilities and for the construction of additional facilities.[5]

Conclusion

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

San Juan, Puerto Rico.

Respectfully submitted.

J. B. FERNANDEZ BADILLO
Solicitor General

AMERICO SEDA
Assistant Solicitor General
Attorneys for Respondent.

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[4] However, petitioner overlooks the decision in *Offutt Housing Co. v. Sarpy County*, 351 U.S. 253, and its implications.

[5] Cf. *Silas Mason Co. v. Tax Comm. of Washington*, 82 L. Ed. 187; *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525.

APPENDIX

(1) Military Leasing Act (10 U.S.C.A. 2667):

"(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

(1) under the control of that department;

(2) not for the time needed for public use; and

(3) not excess property, as defined by section 472 of title 40.

(b) A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) must permit the Secretary to revoke the lease at any time unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) must be revocable by the Secretary during a national emergency declared by the President; and

(5) may provide, notwithstanding section 303b of title 40 or any other provision of law, for the maintenance, protection, repair, or restoration, by

the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part of all of the consideration for the lease.

(c) This section does not apply to oil, mineral, or phosphate lands.

(d) Money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.

(e) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that if and to the extent that the leased property is later made taxable by State or local governments under an act of Congress, the lease shall be renegotiated."

(II) Pertinent provisions of Act of the Legislature of Puerto Rico approved on February 16, 1903 (28 L.P.R.A. 41-47):

Section 5 (28 L.P.R.A. 45):

"*Consent for United States to acquire lands by purchases or condemnation; jurisdiction of Commonwealth*

That consent be and is hereby given to the United States to acquire for naval, military or other public

purposes, by purchase, lease or condemnation any lands within the Island of Puerto Rico, and when so acquired and possession thereof shall have been taken by the United States, all jurisdiction over such lands by the Commonwealth of Puerto Rico shall ipso facto cease and terminate: *Provided, however*, That upon the subsequent alienation or the discontinuance of the lease by the United States of any or all lands so acquired, the Commonwealth of Puerto Rico shall again have jurisdiction thereover."

(III) Pertinent provisions of Act, No. 62 of June 10, 1955 (28 L.P.R.A. 54-57, 1962 Cum. Supp.):

Section 4 (28 L.P.R.A. 57, 1962 Cum. Supp.):

"*Reversion of jurisdiction to Commonwealth*

The jurisdiction granted shall continue only while the United States is the proprietor or is in possession of the lands and the lands are used for the naval, military, or other public purposes for which they were acquired. In the event that the United States ceases to be the proprietor of the lands or to be in possession of same, or in the event that they are not used for the purposes for which they were acquired, the Commonwealth of Puerto Rico shall again have jurisdiction over same."